

FILED IN THE
U.S. DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

Apr 17, 2020

SEAN F. McAVOY, CLERK

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

PATRICK KINCHLER,

Petitioner,

v.

STATE OF WASHINGTON,

Respondent.

2:20-cv-00133-SAB

**ORDER TO PROCEED *IN*
FORMA PAUPERIS AND
SUMMARILY DISMISSING
HABEAS PETITION**

Petitioner, a resident of Spokane, Washington, seeks to file *in forma pauperis* a *pro se* Petition for Writ of Habeas Corpus by a Person in State Custody pursuant to 28 U.S.C. § 2254. Because it appears Petitioner lacks sufficient funds to prosecute this action, **IT IS ORDERED** that Petitioner's request to proceed *in forma pauperis* is **GRANTED**.

It does not appear this Court has jurisdiction to consider Mr. Kinchler's habeas petition. First, a petitioner for habeas corpus relief must name the person having custody of him or her as the respondent to the petition. *Rumsfeld v. Padilla*, 542 U.S. 426, 441-42 (2004); *Stanley v. Cal. Sup. Ct.*, 21 F.3d 359, 360 (9th Cir. 1994). If the petitioner is incarcerated, the proper respondent is generally the warden of the institution where petitioner is incarcerated. *See Ortiz-Sandoval v. Gomez*, 81 F.3d 891, 894 (9th Cir. 1996). Failure to name a proper respondent deprives federal courts of personal jurisdiction. *See Stanley*, 21 F.3d at 360.

**ORDER TO PROCEED *IN FORMA PAUPERIS* AND SUMMARILY
DISMISSING HABEAS PETITION -- 1**

1 Here, it appears that Mr. Kinchler is not incarcerated, and he contends in his
2 petition that he has already fulfilled any community custody obligations stemming
3 from a conviction for a sex crime twenty years ago. Although he makes no
4 assertion that he is obliged to register as a sex offender, the Ninth Circuit has
5 recognized that such registration requirements do not render a petitioner “in
6 custody” for purposes of habeas corpus jurisdiction. *See Williamson v. Gregoire*,
7 151 F.3d 1180, 1184-85 (9th Cir. 1998).

8 The federal courts have jurisdiction to issue a writ of habeas corpus to
9 someone who “is in custody in violation of the Constitution or laws or treaties of
10 the United States” 28 U.S.C. § 2241(c)(3). It is a jurisdictional requirement
11 that, at the time a habeas petition is filed, “the habeas petitioner be ‘in custody’
12 under the conviction or sentence under attack[.]” *Maleng v. Cook*, 490 U.S. 488,
13 490-91 (1989) (citing 28 U.S.C. §§ 2241(c)(3) & 2254(a); *Carafas v. LaVallee*,
14 391 U.S. 234, 238 (1968)). Petitioner specifically states that he is not challenging a
15 criminal sentence or conviction, but conditions imposed by a “civil court.”
16 Therefore, Petitioner does not meet the “in custody” requirement under section
17 2254. *See Maleng*, 490 U.S. at 492 (“[O]nce the sentence imposed for a conviction
18 has completely expired, the collateral consequences of that conviction are not
19 themselves sufficient to render an individual ‘in custody’ for the purposes of a
20 habeas attack upon it.”).

21 It appears Petitioner is challenging conditions imposed by a civil court in a
22 child custody matter. Matters involving family law/domestic relations are best
23 deferred to the state. The state has a strong interest in domestic relations; state
24 courts have relative expertise in this area and the ability to provide ongoing
25 supervision; and it is undesirable to have potentially incompatible federal and state
26 decrees in this area. *See, e.g., Ingram v. Hayes*, 866 F.2d 368, 369-70 (11th Cir.
27 1988) (per curiam); *DiRuggiero v. Rodgers*, 743 F.2d 1009, 1019-20 (3d Cir.

1 1984); 13B Wright & Miller, Federal Practice and Procedure § 3609, at 461
 2 (1984).

3 It is well established policy that the federal courts should abstain from
 4 exercising jurisdiction in domestic disputes. *Peterson v. Babbitt*, 708 F.2d 465, 466
 5 (9th Cir. 1983) (per curiam) (decisions regarding the welfare of children have been
 6 traditionally left to the state and to the state courts.) *Cf. Lehman v. Lycoming*
 7 *County Children's Services Agency*, 458 U.S. 502 (1982). “[T]he whole subject of
 8 the domestic relations of husband and wife, parent and child, belongs to the laws of
 9 the States, and not to the laws of the United States.” *Ohio ex rel. Popovici v. Agler*,
 10 280 U.S. 379, 383 (1930) (quoting *In re Burrus*, 136 U.S. 586, 593-94 (1890)).¹

11 Based on Petitioner’s prayer for relief, it appears his primary objective in
 12 filing this case is for this Court to overturn state court decisions regarding the
 13 custody of his daughter. His claims are a blatant collateral attack on state court
 14 decisions disguised as a habeas claim. This Court does not have habeas corpus
 15 jurisdiction to consider his claims.

16 Moreover, under the doctrine of equitable abstention, “federal courts
 17 traditionally decline to exercise jurisdiction in domestic relations cases when the
 18 core issue involves the status of parent and child,” even when constitutional claims
 19 are asserted. *Coats v. Woods*, 819 F.2d 236, 237 (9th Cir.), *cert. denied*, 484 U.S.
 20 802 (1987).

21
 22 ¹In keeping with this principle, ‘federal courts must decline jurisdiction of cases
 23 concerning domestic relations when the primary issue concerns the status of parent
 24 and child or husband and wife.’ *Buechold v. Ortiz*, 401 F.2d 371, 372 (9th Cir.
 25 1968); *see also Csibi v. Fustos*, 670 F.2d 134, 137-38 (9th Cir. 1982). Even when
 26 a federal question is presented, federal courts decline to hear disputes which would
 27 deeply involve them in adjudicating domestic matters. *See, e.g., Firestone v.*
 28 *Cleveland Trust Co.*, 654 F.2d 1212, 1215 (6th Cir. 1981); *Bergstrom v.*
Bergstrom, 623 F.2d 517, 520 (8th Cir. 1980); *Huynh Thi Ahn v. Levi*, 586 F.2d
 625, 632-34 (6th Cir. 1978); *Hernstadt v. Hernstadt*, 373 F.2d 316, 318 (2d Cir.
 1967).” *Thompson v. Thompson*, 798 F.2d 1547, 1558 (9th Cir. 1986).

1 Because it plainly appears from the petition that Petitioner is not entitled to
2 relief in this Court, **IT IS ORDERED** the petition, ECF No. 1, is **DISMISSED**
3 pursuant to Rule 4, Rules Governing Section 2254 Cases in the United States
4 District Courts. **IT IS FURTHER ORDERED** that all pending Motions are
5 **DENIED as moot.**

6 **IT IS SO ORDERED.** The Clerk of Court is directed to enter this Order,
7 enter judgment, provide copies to Petitioner, and **close** the file. The Court certifies
8 that pursuant to 28 U.S.C. § 1915(a)(3), an appeal from this decision could not be
9 taken in good faith, and there is no basis upon which to issue a certificate of
10 appealability. 28 U.S.C. § 2253(c); Fed. R. App. P. 22(b). A certificate of
11 appealability is therefore **DENIED.**

12 **DATED** this 17th day of April 2020.



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A handwritten signature in blue ink, reading "Stanley A. Bastian", is written over a horizontal line.

18 Stanley A. Bastian
19 United States District Judge
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